

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JAMES D. SUDBERRY, R.,	:	Case No. 1:18-cv-246
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	
vs.	:	Magistrate Judge Stephanie K.
	:	Bowman
WARDEN, LEBANON	:	
CORRECTIONAL INSTITUTION, <i>et.</i>	:	
<i>al.</i> ,	:	
	:	
Defendants.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 2)**

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on April 17, 2018, submitted a Report and Recommendation, recommending that the Court deny Plaintiff's motion to proceed *in forma pauperis*, because Plaintiff has violated 28 U.S.C. § 1915(g)'s three strikes rule. (Doc. 2). Plaintiff filed objections.¹ (Docs. 3, 4).

¹ Plaintiff appears to argue that, regardless of whether he has violated 28 U.S.C. § 1915(g)'s three strikes rule, the Court should allow him to proceed *in forma pauperis*, because he is in imminent danger of physical injury. (Docs. 3, 4). 28 U.S.C. § 1915(g) does contain a "safety valve," which allows a plaintiff to file a complaint *in forma pauperis*, when the plaintiff faces imminent danger. *Bloodworth v. Mohr*, No. 1:16-cv-1049, 2016 WL 6829647, at *2 (S.D. Ohio Nov. 21, 2016) (citation omitted). However, as the Magistrate Judge has already explained, Plaintiff does not qualify for the imminent danger exception. (Doc. 2 at 3). Plaintiff has not advanced particular allegations that he presently faces impending harm. (Docs. 1, 3, 4). Instead, Plaintiff's only particular allegations relate to a past harm that he allegedly suffered while incarcerated at a different facility. (Docs. 1, 3, 4). This is not sufficient to trigger the imminent danger exception. Plaintiff's objections are **overruled**.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court finds that the Report and Recommendation should be and is hereby adopted in its entirety.

Accordingly, for the reasons stated above:

1. The Report and Recommendation (Doc. 2) is **ADOPTED**;
2. Plaintiff's objections (Docs. 3, 4) are **OVERRULED**;
3. Within thirty (30) days of the date of this Order, Plaintiff **SHALL** pay the full \$400 fee (\$350 filing fee plus \$50 administrative fee) required to commence this action;
4. Plaintiff **SHALL** take notice that his failure to pay the full \$400 fee within thirty (30) days of the date of this Order will result in the dismissal of his action; and
5. The Court certifies that, pursuant to 28 U.S.C. § 1915(a)(3), an appeal of this Order would not be taken in good faith and therefore **DENIES** Plaintiff leave to appeal *in forma pauperis*.

IT IS SO ORDERED.

Date: 10/16/2020

s/Timothy S. Black
Timothy S. Black
United States District Judge